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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 56

PENNSYLVANIA RAILROAD COMPANY and BROTHERHOOD OF RAILROAD TRAINMEN, *Petitioners,*

v.

N. P. RYCHLIK, individually and on behalf of and as representative of other employees of the Pennsylvania Railroad, *Respondent*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONER, THE PENNSYLVANIA RAILROAD COMPANY

OPINIONS BELOW

The opinion of the United States District Court for the Western District of New York (R. 22-34) is reported at 128 F. Supp. 449.

The opinion of the United States Court of Appeals for the Second Circuit (R. 39-44) was handed down on January 9, 1956, and is reported at 229 F. (2d) 171.

JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit sought to be reviewed was entered on January 9, 1956. Petitioners' joint petition for writ of certiorari was filed on April 4, 1956, less than 90 days after the entry of the judgment below. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1), 62 Stat. 928.

STATUTES INVOLVED

This suit involves Section 2, Eleventh of the Railway Labor Act, as amended (45 U.S.C. § 152, Eleventh; 64 Stat. 1238) which removes the prohibition against union shop agreements between railroads and the labor organizations representing their employees; and Section 3 of the Act (45 U.S.C. § 153; 48 Stat. 1189) which provides for the establishment of the National Railroad Adjustment Board, or in lieu thereof, of system, group or regional boards of adjustment, for the purpose of adjusting and deciding disputes between the railroads and their employees. Section 2, Eleventh and the pertinent provisions of Section 3 of the Act are set forth in the Appendix, pp. 50-56, *infra*.

QUESTIONS PRESENTED

1. Does a District Court of the United States have jurisdiction to review the merits of a decision of a System Board of Adjustment, established under Section 3, Second of the Railway Labor Act, in a dispute arising under a union shop agreement solely because representatives of the labor organization representing employees of the carrier are members of such System Board and participate in such decision?

2. Does a District Court of the United States have jurisdiction to review the merits of a decision of a System Board of Adjustment which includes a finding that a labor organization is not "national in scope" within the meaning of Section 2, Eleventh (c) of the Railway Labor Act, where Section 3, First (f) of the Railway Labor Act provides an administrative procedure for final determination of such question, and where such labor organization has failed to follow such available administrative procedure for final determination of its status?

STATEMENT OF THE CASE

Respondent N. P. Rychlik was employed by petitioner The Pennsylvania Railroad Company (hereinafter referred to as "Pennsylvania") as a Trainman on Pennsylvania's lines running out of Buffalo, New York, until January 14, 1955. He had been so employed for more than two years (Complaint, par. 1; R. 3).

Petitioner Brotherhood of Railroad Trainmen (hereinafter referred to as "B.R.T.") is the labor organization duly certified under the Railway Labor Act as the collective bargaining representative of Trainmen employed by Pennsylvania (Complaint, par. 2; R. 3).

On March 26, 1952 Pennsylvania and its employees represented by B.R.T. entered into a Union Shop Agreement, in accordance with Section 2, Eleventh of the Railway Labor Act (Complaint, par. 18; R. 7). This Agreement (Exhibit A attached to Complaint; R. 12-17) provided that employees represented by B.R.T., as a condition of their continued employment,

must become members of B.R.T. and maintain membership in good standing in B.R.T., except under specified circumstances (R. 13).

Prior to February, 1943, respondent Rychlik was a member in good standing of B.R.T. (Affidavit of Meyer Fix, par. 2; R. 10). In or about February, 1953, respondent Rychlik resigned his membership in B.R.T. (Affidavit par. 3; R. 10). During the year 1953 other employees of Pennsylvania, like respondent, allowed their membership in B.R.T. to lapse (Complaint, par. 5; R. 4). In or about February, 1953, respondent became a member of United Railroad Operating Crafts (hereinafter referred to as "UROC") which he believed in good faith to be a railroad union national in scope (Affidavit par. 3; R. 10).

Sometime after February, 1953, respondent was cited for non-compliance with the Union Shop Agreement (Affidavit par. 4; R. 10) as were other employees of Pennsylvania who allowed their membership in B.R.T. to lapse (Complaint par. 5; R. 4). Respondent was given a hearing under the Union Shop Agreement before the System Board of Adjustment on or about August 27, 1953, but decision was postponed (Affidavit par. 4; R. 10).

Respondent joined the Switchmen's Union of North America, a union recognized to be national in scope, on July 31, 1954 and has been a member thereof in good standing since that date. Respondent was given a further hearing before the System Board on August 23, 1954. (Complaint par. 10, R. 5; Affidavit pars. 5 and 6, R. 11).

On January 3, 1955, respondent received a letter from the System Board of Adjustment notifying him of the Board's decision that he had not complied with the Union Shop Agreement (Affidavit par. 7; R. 11). On or about January 14, 1955 respondent was notified by Pennsylvania by telephone that he was out of service (Affidavit par. 8; R. 11). This notice was confirmed by a letter sent to respondent by Pennsylvania and received by him on or about January 17, 1955 (Affidavit par. 10; R. 12).

Unnamed fellow employees of respondent also received telephone notification of their discharge and subsequent written confirmation (Affidavit par. 11; R. 12).

At some unspecified time after respondent and unnamed fellow employees allowed their membership in B.R.T. to lapse during the year 1953, they applied for reinstatement in B.R.T., which B.R.T. denied (Complaint pars. 5, 7, 8, and 9; R. 4), although respondent and his fellow employees made tender of membership dues (Complaint par. 16; R. 6).

On January 28, 1955 after his discharge, respondent filed a complaint in the United States District Court for the Western District of New York against petitioners Pennsylvania and B.R.T. The complaint and affidavit attached thereto alleged the facts outlined above, and the complaint asked the District Court to restrain B.R.T. and Pennsylvania from continuing the discharge or suspension of respondent and his unnamed fellow employees until they have been given an opportunity for reinstatement or membership in the B.R.T. under the same terms or conditions available to other members (R. 8-9), and from

enforcing the union shop agreement to terminate their employment (R. 9). It was charged that their discharge, following B.R.T.'s refusal to reinstate them, was contrary to Section 2, Eleventh (a) of the Railway Labor Act (R. 5). And since respondent was a member in good standing of the Switchmen's Union since July 31, 1954, his discharge was said to violate Section 2, Eleventh (c) of the Act (R. 5).

The complaint also charged that the union shop agreement was invalid under the Railway Labor Act in that (1) under the Act a System Board of Adjustment does not have jurisdiction over union shop disputes, (2) the Act and general principles of law are violated when the collective bargaining agent, B.R.T., is represented on the System Board, and (3) the provisions of the union shop agreement purporting to make the System Board's decisions final and binding are contrary to the Act (R. 7-8). B.R.T., in its representation on the Board, was said to be the "accuser, judge, and jury, in respect to the employees' right to work, all of which is in direct conflict with settled principles of American jurisprudence" (R. 8).

The District Court, on petitioners' motions, dismissed the complaint for failure to state a cause of action (R. 34-36). In its opinion (R. 22-34), the court noted that the complaint was silent as to the proceedings before the System Board and no request had been made to review such proceedings. Such a review, even when requested, was held not to extend to the merits of the decision but only to the Board's procedure, the scope of the decision, and factors of fraud or corruption—all matters untouched by the complaint (R. 29). The court further held that the union shop

agreement was valid and that representation of the collective bargaining agent on the System Board did not *per se* make the agreement invalid (R. 30). It was noted that the complaint contained no allegation of discrimination by a Board member.

The District Court further held that under the Act and the union shop agreement continued membership in a qualified union is a condition of continued employment.[1] The Brotherhood's denial of reinstatement to respondent was held not to be a ground for judicial intervention (R. 31) and respondent's affiliation with the Switchmen's union did not excuse his prior failure to maintain membership in a qualified union under (R. 31-32).[1]

Finally, the District Court held that the pleadings made it unnecessary to determine the status of UROC and whether membership therein constituted compliance with the union shop agreement. It was noted that determination of whether UROC was a union "national in scope" was left to specific administrative procedure under the Railway Labor Act (R. 33).

The Court of Appeals for the Second Circuit reversed the judgment of the District Court and remanded the case for trial on the merits (229 F. 2d 171; R. 39-44). It held that the System Board of Adjustment had jurisdiction over the matter under Section 3, First (i) of the Act as a dispute growing out of the interpretation or application of agreements concerning working conditions. But it held that the

[1] The District Court below decided these points adversely to the respondent, and although raised on appeal, these contentions were not mentioned in the opinion of the Court of Appeals below and are not now before this Court.

representation of the Brotherhood on the System Board made that Board's determination suspect because of the Brotherhood's presumptive bias against UROC, a competing union whose status as an organization "national in scope" was at issue. And it felt that this supposed bias was not remedied by a proceeding under Section 3, First (f) whereby a three-man board—composed of a representative of qualified unions, a representative of the union claiming to be "national in scope", and a third member chosen by the National Mediation Board—decides whether the applicant union is "national in scope" and hence is entitled to participate in the selection of members of the National Railroad Adjustment Board. Thus the District Court was held to have jurisdiction to review the merits of the System Board's determination.

SUMMARY OF ARGUMENT

The decision of the Court of Appeals below should be reversed by this Court because:

1. Traditionally the administrative boards established under the Railway Labor Act to decide disputes between railroads and their employees have been bipartisan boards, made up of representatives of the railroads and of the labor organizations. Equally traditionally, the decisions of such boards have been held to be final and binding, subject to review on the merits only where express authority for such review is provided by the Act.

2. No unusual factors are present in a dispute under a union shop agreement which may not be present in any dispute between a railroad and its employees. There are many situations under collectively bargained

agreements where the interests of individual employees and of their collective bargaining agents may be opposed, resulting in disputes within the jurisdiction of the boards on which the collective bargaining agents are represented. Unless the courts are to be thrown wide open for the interpretation and application of collectively bargained agreements in the railroad industry, the presumption must be that the proceedings of such boards are without bias. Where bias is shown, a board award may be vacated or stayed pending further proceedings under the Railway Labor Act.

3. This Court has consistently held that the means provided by the Railway Labor Act for determining and settling disputes between railroads and their employees are exclusive remedies which oust the courts of jurisdiction except in narrowly limited situations. Review of the merits of board decisions will involve the courts in the interpretation and application of railroad collective bargaining agreements, which is a function that Congress has given exclusively to these administrative boards.

4. The Railway Labor Act provides an administrative procedure for determining whether UROC is "national in scope", the only substantial issue raised by respondent before the System Board in defending the charge of non-compliance with the union shop agreement. Under well-established principles, this issue should be determined only by the means established by the Act. The fact that the issue is raised by respondent and other individual members of UROC, rather than by UROC itself, does not create jurisdiction in the courts to decide this administrative

question. Court jurisdiction over this issue, furthermore, will render uncertain the application of union shop agreements and the status of employees under such agreements.

ARGUMENT

I. DECISIONS OF THE BIPARTISAN BOARDS, INCLUDING SYSTEM BOARDS OF ADJUSTMENT, ESTABLISHED UNDER SECTION 3 OF THE RAILWAY LABOR ACT, ARE NOT SUBJECT TO COURT REVIEW ON THE MERITS EXCEPT IN THE MANNER PROVIDED BY THE ACT, THAT IS, IN ENFORCEMENT PROCEEDINGS.

For thirty years Congress through the Railway Labor Act has entrusted the settlement of disputes between railroads and their employees to bipartisan boards established under that Act.

The Railway Labor Act of 1926 (44 Stat. 577) provided in Section 3 (44 Stat. 578) for the establishment of boards of adjustment by agreement between any carrier or group of carriers or the carriers as a whole and the employees. The Act provided that these boards of adjustment should have jurisdiction over disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions. The decisions of the adjustment boards established under the Act were final and binding on both parties to the dispute. The Act provided for equal representation of the carrier and the employees on the adjustment board with power in a majority of the adjustment board members to render a binding award.[2]

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[2] Section 3 of the Railway Labor Act of 1926 (44 Stat. 578) reads as follows:

"First. Boards of adjustment shall be created by agreement

The 1934 amendments to the Railway Labor Act amended Section 3 of the Act to establish the National Railroad Adjustment Board (45 U.S.C. § 153, First, Appendix *infra*, p. 51). They also preserved the right of the railroads and their employees to establish system, group or regional boards of adjustment with

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between any carrier or group of carriers, or the carriers as a whole, and its or their employees.

"The agreement—

"(a) Shall be in writing;

"(b) Shall state the group or groups of employees covered by such adjustment board;

"(c) Shall provide that disputes between an employee or group of employees and a carrier, growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, that the dispute shall be referred to the designated adjustment board by the parties, or by either party, with a full statement of the facts and all supporting data bearing upon the dispute;

"(d) Shall provide that the parties may be heard either in person, by counsel, or by other representative, as they may respectively elect, and that adjustment boards shall hear and, if possible, decide promptly all disputes referred to them as provided in paragraph (c). Adjustment boards shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in the dispute;

"(e) Shall stipulate that decisions of adjustment boards shall be final and binding on both parties to the dispute; and it shall be the duty of both to abide by such decisions;

"(f) Shall state the number of representatives of the employees and the number of representatives of the carrier or carriers on the adjustment board, which number of representatives, respectively, shall be equal;

"(g) Shall provide for the method of selecting members and filling vacancies;

"(h) Shall provide for the portion of expenses to be assumed by the respective parties;

"(i) Shall stipulate that a majority of the adjustment board

jurisdiction over these railroad labor disputes (45 U.S.C. § 153 Second; Appendix *infra*, p. 56).

Like the former boards of adjustment provided for in the 1926 Act, the National Railroad Adjustment Board is established as a bipartisan board with equal representation of the railroads and of the employees. The procedural requirements of Section 3, First of the Act with regard to the handling of disputes by the National Railroad Adjustment Board are quite similar to those established by the 1926 Act for the boards of adjustment. Under the 1934 amendments there are no specific requirements as to the form of system, group or regional boards of adjustment established under Section 3, Second but the pattern for such boards which was set by the 1926 Act has generally been followed by the railroads and their employees when they have determined to provide such boards of adjustment to handle disputes in lieu of the National Railroad Adjustment Board.

Thus the System Board of Adjustment provided for by the union shop agreement between petitioners Pennsylvania and B.R.T. (Exhibit "A" attached to the complaint, par. 7; R. 15) is a bipartisan board with two members appointed by the Pennsylvania and two by B.R.T.; provision is made for a hearing and notice

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members shall be competent to make an award, unless otherwise mutually agreed;

"(j) Shall stipulate that adjustment boards shall meet regularly at such times and places as designated; and

"(k) Shall provide for the method of advising the employees and carrier or carriers of the decisions of the board.

"Second. Nothing in this Act shall be construed to prohibit an individual carrier and its employees from agreeing upon the settlement of disputes through such machinery of contract and adjustment as they may mutually establish."

to the employee of the hearing; and it is provided that disputes of the System Board shall be by majority vote and shall be final and binding.

Throughout the 30-year period that these boards provided for by Congress in the Railway Labor Act have been functioning, it has been almost universally held that the findings of such boards on the merits of disputes are not subject to review in the courts. The courts have held that these administrative boards are intended by Congress to have exclusive jurisdiction over the interpretation and application of collectively bargained agreements in the railroad industry, and that whereas the procedure of such boards may be subject to review, the courts will not take jurisdiction of the merits of the disputes even while exercising the judicial power to void decisions of such boards because of procedural deficiencies.

This principle was established in one of the earliest cases involving the validity of an award of a System Board of Adjustment, *Brand, et al.* v. *Pennsylvania Railroad Company,* 2 LC par. 18489 (D.C. E.D. Pa. 1939). In the *Brand* case plaintiffs were a group of employees who had been furloughed during depression years and on return to service were given their original pre-depression seniority dates. This action by the railroad was attacked by another group of employees who had been adversely affected and who were supported in their position by the collective bargaining agent. The protesting employees took the dispute to a System Board of Adjustment, established under Section 3, Second of the Railway Labor Act. The System Board of Adjustment thereafter issued an award sustaining

the position of the protesting employees, without giving any notice to the plaintiffs of the proceedings and without giving them any right to appear to present their position to the board. Thereafter the railroad deprived the plaintiffs of the seniority dates which had been accorded to them, and the plaintiffs brought suit in the United States District Court to set aside the award of the board and to secure a mandatory injunction upon the railroad to restore them to their previous seniority.

The District Court set aside the award of the System Board of Adjustment as void for lack of notice to the plaintiffs but refused to pass on the merits of the dispute. The court said that the dispute as to the application of the seniority rules of the collectively bargained agreement was in the exclusive province of the board to determine, and the court could express no opinion on the merits of the dispute. The court said that its concern was solely with the question of whether the proceedings were in any respect irregular and whether the plaintiffs were given a fair and proper opportunity to protect their interests.

One of the contentions made by the defense in the *Brand* case was that notice to the collective bargaining agent was notice to the plaintiffs. This contention was rejected by the court on the ground that since the collective bargaining agent had taken the opposing side in the dispute it could not be held to represent the plaintiffs. It is interesting to note that although the court took note of the fact that the collective bargaining agent presented the case for the protesting employees to the System Board of Adjustment and had a representative on the System Board of Adjust-

ment, there is no indication in the opinion that these circumstances in themselves affected the validity of the findings of the System Board of Adjustment, the award being set aside solely on the ground of failure to give plaintiffs notice and an opportunity to appear.

The subsequent cases have sustained and strengthened this view that the courts do not have jurisdiction to review the merits of decisions of the boards established by Section 3 of the Railway Labor Act because the interpretation and application of railroad collectively bargained agreements has been given by Congress exclusively to these administrative boards.

In *Farris* v. *Alaska Airlines, Inc.*, 113 F. Supp. 907 (D.C. Wash. 1953), plaintiff brought suit for damages for wrongful discharge after a claim for reinstatement had been denied by a System Board of Adjustment established under Section 204 of Title II of the Railway Labor Act.[3]

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[3] Section 204 of Title II of the Railway Labor Act, applicable to carriers by air, provides for the establishment of boards of adjustment directly comparable to those provided for in Section 3, Second of the Act. Section 204 of Title II of the Act reads as follows:

"SEC. 204. The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

"It shall be the duty of every carrier and of its employees, act-

The court held that the decision of the System Board was final and binding in accordance with the terms of the agreement under which it had been established. The court further held that it had no jurisdiction to review the decision of the System Board on the merits but could inquire only whether (1) the board's procedure conformed substantially to the statute and the agreement; (2) whether the award confined itself to the submission made to the board; and (3) whether the award was arrived at by fraud or corruption. Finding no substantial irregularities in the board's award the court held that judgment should be entered for the defendant.

In a similar case, *Bower* v. *Eastern Airlines, Inc.*, 214 F.2d 623 (CCA 3d 1954), cert. den. 348 U.S. 871 (1954) the court again held that the merits of a decision of a System Board of Adjustment could not be reviewed by a court. The court limited review to questions of the jurisdiction and procedure of the System Board and to determining whether the board gave plaintiff a full and fair hearing and exercised

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ing through their representatives, selected in accordance with the provisions of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, Title I, of this Act.

"Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group or carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in this Act shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of this title, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction."

its honest judgment in reaching its conclusions and decision on the full record. In *Sigfried* v. *Pan American World Airways,* 230 F.2d 13 (CCA 5th 1956), cert. den. 76 S. Ct. 782 (1956), it was again held that there could be no review of the merits of a System Board decision and that review was limited to questions concerning the jurisdiction of a System Board and to regularity of the proceedings before the board. See also *Byers* v. *Atchison, Topeka & Santa Fe Ry. Co.,* 129 F. Supp. 109 (D.C. S.D. Cal. 1955).

Similar results have been reached by the courts with regard to review on the merits in instances where an employee has taken a claim to the National Railroad Adjustment Board, received an adverse award, and thereafter sought court review.

In *Berryman* v. *Pullman Co.,* 48 F. Supp. 542 (D.C. W.D. Mo. 1942), plaintiff brought suit for recovery of wages and for reinstatement as a Pullman conductor after his claim had been denied by the National Railroad Adjustment Board. The court denied review on the merits on the ground that the Adjustment Board award was final and binding and sustained the Pullman Company's motion for summary judgment. To the same effect are *Williams* v. *Atchison, Topeka & Santa Fe Ry. Co.,* 356 Mo. 967, 204 S.W. (2d) 693 (1947); *Reynolds* v. *Denver & Rio Grande Western R.R. Co.,* 174 F.2d 673 (CCA 10th 1949); and *Hecox* v. *Pullman Co.,* 85 F. Supp. 34 (D.C. W.D. Wash. 1949).

The cases cited just above are ones in which plaintiff sought the same relief from the courts as he had previously asked of the National Railroad Adjustment Board. In another established line of cases railroad

employees, after dismissal by their employers, have sought reinstatement before the National Railroad Adjustment Board and, after denial awards, have brought actions for damages for wrongful discharge in the courts. It has been uniformly held that the courts have no jurisdiction over such actions and these holdings amount to a denial of court review of the Adjustment Board's findings on the basis that the Board's determination is final. Among such cases are *Michel* v. *Louisville & Nashville R.R. Co.*, 188 F.2d 224 (CCA 5th 1951); *Greenwood* v. *Atchison, Topeka & Santa Fe Ry. Co.*, 129 F. Supp. 105 (D.C. S.D. Cal. 1955); *Coats* v. *St. Louis-San Francisco Ry. Co.*, 230 F.2d 798 (CCA 5th 1956); *Kelly* v. *Nashville, Chattanooga & St. L. Ry.*, 75 F. Supp. 737 (D.C. E.D. Tenn. 1948); *Ramsey* v. *Chesapeake and Ohio R.R. Co.*, 75 F. Supp. 740 (D.C. N.D. Ohio 1948); and *Hicks* v. *Thompson, et al.*, 207 S.W. (2d) 1000 (Tex. Civ. App. 1948).

All of these cases indicate the clear understanding of the courts that jurisdiction over disputes between railroads and their employees with regard to the interpretation and application of labor agreements is lodged exclusively in the boards provided for in Section 3 of the Railway Labor Act. In only one case, specifically relied on by the Court of Appeals below in support of its holding, has a decision of a System Board established under the Railway Labor Act been reviewed on its merits.

In *Edwards, et al.* v. *Capital Airline, Inc.*, 176 F.2d 755 (1949) cert. den. 338 U.S. 885 (1949), plaintiffs had received an adverse decision from a System Board of Adjustment and brought suit for a declaratory

judgment and an order enjoining Capital from carrying out the award of the System Board. The union involved had adopted a position in the seniority dispute hostile to the plaintiffs and two union representatives were members of the System Board.

The court in the *Edwards* case held that although the award was entitled to presumptive validity the plaintiffs were entitled to court review on the merits. It was expressly pointed out by the court that the holding was limited to this particular situation.

Not only is the *Edwards* case out of line with the body of cases holding that the courts have no jurisdiction to review the merits of these railroad labor disputes, but there are also certain factors which distinguish the *Edwards* case from the present situation.

It is evident from the opinion in the *Edwards* case that the Court of Appeals for the District of Columbia was doubtful as to its authority to make findings on the merits in the dispute. Its conclusion to determine the merits, rather than simply to void the award of the System Board and return the dispute for further handling under the Railway Labor Act, as was done in the *Brand* case, *supra*, p. 13, was probably influenced by the fact that the dispute involved the seniority rights of veterans returning from military service which, of course, were governed not only by the applicable agreements but also by the veterans reemployment statutes. Secondly, the *Edwards* decision was handed down before the decisions of this Court in *Slocum* v. *D.L. & W. R.R. Co.*, 339 U.S. 239 (1950), and *Order of Railway Conductors* v. *Southern Railway Co.*, 339 U.S. 255 (1950). Before these latter decisions were rendered it was believed generally, on

the basis of *Moore* v. *Illinois Central R.R. Co.*, 312 U.S. 630 (1941), that railroad labor disputes of this character could be taken either to court or to the boards provided for in Section 3 of the Railway Labor Act. In other words, it had not yet been firmly established by this Court that the bipartisan boards provided for in the Railway Labor Act have exclusive jurisdiction to determine the merits of such disputes. Thus the Court of Appeals for the District of Columbia in reaching its conclusions in the *Edwards* case may well have been influenced by a belief that if the decision of the System Board of Adjustment were voided the dispute could be taken to court, and have decided to determine the questions on the merits rather than prolong the dispute by voiding the System Board award without further action.

Since the *Slocum* and *Railway Conductors* cases, however, there can be no question but that these railroad labor disputes are beyond the jurisdiction of the courts except in the enforcement proceedings provided by Section 3, First (p) of the act (Appendix, *infra*, p. 56) with regard to orders of the National Railroad Adjustment Board. The *Berryman* and other cases cited above make it clear that an employee who loses on the merits in a claim against the railroad before the National Railroad Adjustment Board cannot secure court review of the merits of his claim. It has also been established that a railroad against which a claim has been sustained by the National Railroad Adjustment Board, cannot secure court review;

Washington Terminal Co. v. *Boswell,* 124 F.2d 235 (App. D.C. 1941), aff'd. *per curiam* 319 U.S. 732 (1942). Similarly the majority of the cases have denied review on the merits of decisions of System Boards adverse to claimant employees. The only avenue for court review on the merits is in a suit brought to enforce an award of the National Board.

The Court of Appeals below therefore erred in its conclusion that the District Court had jurisdiction to review the merits of the System Board award holding that respondent had failed to comply with the union shop agreement. Even if the Court of Appeals below were correct in its apparent conclusion that presence of B.R.T. representatives on the System Board *per se* rendered the decision in respondent's case invalid, it should have limited its judgment to such a finding, setting aside the Board's award and remanding the dispute for such further handling as might be necessary under the processes of the Railway Labor Act.

II. Unless the courts are to be opened to extensive railroad labor litigation, contrary to congressional intent, it must be presumed that system boards of adjustment are unbiased in disputes arising under union shop agreements as well as in those arising under other collectively bargained agreements.

The history of bipartisan boards provided for in Section 3 of the Railway Labor Act, and the cases discussed in the above section of this brief, show an acceptance of this form of handling of labor disputes and show that the decisions of such boards on the merits of a dispute are accorded the finality which Congress intended in order to avoid opening the courts to such disputes. Even in the *Edwards* case,

supra, the court assumed that the award of the System Board was presumptively valid. The Court of Appeals below, however, in directing that this case be returned to the District Court for trial on the merits, reversed the trend by holding, in effect, that the System Board award is invalid. The Court below thus went beyond a mere presumption that the decision in respondent's case was invalid. Judge Hand's opinion (R. 39-44) is clearly based on the conclusion that the bipartisan character of the System Board which rendered the decision in itself invalidates the board's action, and requires intervention of the courts to set aside the award and to determine the merits of the dispute.

This question of bias on the part of union members of such boards in the handling of union shop disputes is not raised here for the first time. Cases involving the status of UROC under Section 2, Eleventh (e) of the Railway Labor Act have now been in the courts for several years. *United Railroad Operating Crafts, et al.* v. *Wyer, et al.*, 205 F.2d 153 (CCA 2d 1953), cert. den. 347 U.S. 929 (1954); *United Railroad Operating Crafts, et al.* v. *New York, New Haven & Hartford R.R. Co.*, 205 F.2d 153 (CCA 2d 1953); *United Railroad Operating Crafts, et al.* v. *Northern Pacific Ry. Co., et al.*, 208 F.2d 135 (CCA 9th 1953), cert. den. 347 U.S. 929 (1954); *Johns, Sr.* v. *Baltimore & Ohio R.R. Co., et al.*, 118 F. Supp. 317 (D.C. N.D. Ill. 1954), aff'd. 347 U.S. 964 (1954); *Alabaugh* v. *Baltimore & Ohio R.R. Co.*, 222 F.2d 861 (CCA 4th 1955), cert. den. 350 U.S. 831 (1955); *Brock* v. *Sleeping Car Porters*, 129 F. Supp. 849 (D.C. W.D. La. 1955); *United Railroad Operating Crafts, et al.* v.

Pennsylvania R.R. Co., et al., 212 F.2d 938 (CCA 7th 1954); and *Pigott, et al.* v. *Detroit, Toledo & Ironton R.R. Co.*, 221 F.2d 736 (CCA 6th 1955), cert. den. 350 U.S. 833 (1955). All of these cases have held that the bipartisan boards established by the Railway Labor Act, the National Railroad Adjustment Board and the system, group or regional boards of adjustment, properly have jurisdiction over disputes arising under union shop agreements. These decisions reflect the presumption, now rejected by the Court of Appeals below, that boards on which the collective bargaining agents are represented may validly determine such disputes.

United Railroad Operating Crafts, et al. v. *Pennsylvania Railroad Co., et al., supra,* involved the union shop agreement between petitioners Pennsylvania and B.R.T. which is here in issue. Plaintiffs in that case brought suit to enjoin the Pennsylvania from proceeding under the union shop agreement to a decision by the System Board of Adjustment, and for a declaratory judgment to the effect that membership in UROC constituted compliance with the union shop agreement on the ground that UROC was a union "national in scope" within the meaning of Section 2, Eleventh (c) of the Railway Labor Act. No question as to jurisdiction was raised in the District Court, which decided the dispute on the merits. 25 L. C. par. 68118 (N.D. Ill. 1953). Certiorari was denied by this Court prior to a ruling by the Court of Appeals for the Seventh Circuit (347 U.S. 929 (1954)). The Court of Appeals for the Seventh Circuit remanded the case to the District Court with instructions to dismiss the case

for lack of jurisdiction. In doing so the Circuit Court noted that the plaintiffs as members of UROC might be at a disadvantage before a board including representatives of the collective bargaining agent. The court, however, by sending the dispute back to the System Board implied that there was no presumption that the members of the board would be prejudiced against the plaintiffs.

Thus the Court of Appeals for the Seventh Circuit, faced with the representation of the collective bargaining agent on the bipartisan board having jurisdiction over a union shop dispute, refused to presume that the decision of the board would be biased. Following this decision disputes involving respondent and other Pennsylvania employees were decided by the System Board, and the Court of Appeals below has now adopted the presumption of bias in the handling of these disputes (in fact a presumption of the invalidity of Board awards) which was rejected by the Court of Appeals for the Seventh Circuit and by the courts in the other cited cases.

If the decision of the Court of Appeals below is sustained and its implications are given full effect, there will necessarily be a similar presumption of invalidity with regard to all decisions of System Boards of Adjustments in union shop disputes. These disputes under union shop agreements arise only when the collective bargaining agent which is a party to the agreement cites an employee for failure to comply with the agreement. There is consequently in every instance a direct conflict between the employee and the collective bargaining agent. The employee claims that he has complied with the union shop agreement

while the collective bargaining agent claims that he has not done so. These disputes may involve simply questions of fact, such as whether an employee has tendered his dues, or whether the tender was timely made, or they may involve more complicated situations, such as the basis on which the union has denied or terminated the employee's membership, or whether, as in respondent's case, the employee has satisfied the union shop agreement by membership in another union and whether such other union is national in scope. The conflict exists in the same degree in all these disputes, once the collective bargaining agent has determined to cite the employee for non-compliance with the union shop agreement. This is an inevitable consequence of the action of Congress in permitting the railroads and the collective bargaining agents to enter into union shop agreements and entrusting the settlement of disputes under the union shop agreements to the administrative boards established under Section 3 of the Railway Labor Act.

In the opinion of the court below there is an indication (R. 44) that court review of this dispute on the merits is necessary because respondent has a right granted by the Railway Labor Act which must be protected, i.e., the right to belong to a union national in scope, organized in accordance with the Railway Labor Act, and admitting to membership employees of a craft or class engaged in engine, train, yard or hostling service even if such union is not the collective bargaining representative. The question here presented to the System Board of Adjustment, however, as to whether United Railroad Operating Crafts was national in scope within the meaning of the union

shop agreement,[4] even if it is assumed to be a question involving a right of respondent under the Railway Labor Act,[5] does not differ in substance from any other question raised in a union shop dispute.

Section 2, Eleventh of the Railway Labor Act (Appendix, *infra*, p. 50) effectively prohibits the discharge of an employee for failure to comply with a union shop agreement unless the employee has failed to tender the periodic dues, initiation fees and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. When a railroad employee is cited for non-compliance with the union shop agreement his defense to such a charge must necessarily fall into one of the following categories: (1) proof that the

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[4] No question is raised at any point in the record as to whether United Railroad Operating Crafts is a labor union organized in accordance with the Railway Labor Act and admitting to membership employees in a class or craft of engine, train, yard or hostling service. The issue before the System Board was whether United Railroad Operating Crafts was "national in scope."

[5] There is serious doubt whether Section 2, Eleventh of the Railway Labor Act, which relaxes the general prohibition of the Act against union shop agreements in so far as a specific type of union shop agreement is concerned, can be said to confer any rights upon individual employees. Individual rights conferred on employees by Section 2, Fifth of the Act (45 U.S.C. Sec. 152, Fifth) are restricted by an agreement under Section 2, Eleventh; but so long as the union shop agreement conforms to the requirements of Section 2, Eleventh the application of the union shop agreement does not establish court jurisdiction on the basis of alleged rights granted to individual employees by the Act. See *Hayes, et al.* v. *Union Pacific R.R. Co.*, 184 F. 2d 337 (CCA 9th 1950) cert. den. 340 U.S. 942 (1951) which held that the courts have no jurisdiction over the application of valid collectively bargained agreements on the basis of allegations that such application violates rights guaranteed to individual employees by the Railway Labor Act.

required payments to the union have been tendered; (2) proof that his membership in the union has been denied or terminated for some reason other than failure to tender the required payments to the union; or (3) if he is an employee in engine, train, yard or hostling service, proof that he is a member in some other labor organization, national in scope, organized in accordance with the Railway Labor Act and admitting to membership employees of a craft or class in engine, train, yard or hostling service. If the employee can prove that his case falls within any of the foregoing categories he has shown that he is in compliance with the union shop agreements permitted by the Railway Labor Act. Each such defense to a charge of non-compliance with a union shop agreement stands on an equal footing. The defense raised in respondent's case, where he contended that the union which he joined was national in scope, was no more valuable to him than the defense of payment of dues may be to some other employee who is cited for non-compliance with a union shop agreement.

In other words, it follows from the opinion of the Court of Appeals below that in every union shop dispute which is decided by a System Board, with representation of the collective bargaining agent on the board, the decision of the System Board is invalid and the courts, therefore, have jurisdiction to review each and every one of such disputes on the merits.

Furthermore, it is difficult to see how such a principle, if sound, can be confined to the disputes under union shop agreements. There are and have been over the years many disputes, arising under collectively bargained agreements and consequently

within the jurisdiction of the boards provided for in Section 3 of the Railway Labor Act, in which the collective bargaining agent necessarily adopts a position opposed to the claims of employees affected by the dispute.

The *Edwards* case discussed *supra,* p. 18, is an example of a type of dispute which frequently arises between a railroad and its employees. The *Edwards* case involved a protest by one group of employees with regard to seniority rights which the employer had accorded to another group of employees. In such a situation, which is common in the railroad industry where job retention and job selection are almost entirely based on seniority rights, the collective bargaining agent must side with one claimant or group of claimants against the other. Such disputes are clearly within the jurisdiction of System Boards of Adjustment and have been subject to the same finality of decision as any other types of disputes between railroads and their employees.

It should be realized that if these boards are to function in the manner intended by Congress to settle and adjust these minor disputes between railroads and their workers, there must be such a degree of reasonableness and flexibility in the consideration of disputes by these boards that decisions can be reached. If an employee's claim taken to a System Board is denied because a representative of the collective bargaining agent agrees with the railroad members of the board that the claim should not be sustained, it would be possible for the employee making the claim to contend that this showed bias against him on the part of the collective bargaining agent. Yet such a claim of

bias, if the implications of the decision below are made effective, would give the courts jurisdiction to review the merits of even the simplest form of pay claim made by an employee under a collectively bargained agreement.

That such a conclusion is not far-fetched appears from the fact that the court below expressly accepted and adopted as a precedent the decision in the *Edwards* case (R. 43), which held that the court had jurisdiction to review the merits of a board decision in one of the commonest types of disputes under collectively bargained agreements. It is apparent, therefore, that if bias is to be presumed from the presence of representatives of a collective bargaining agent on a System Board of Adjustment in disputes where conflict exists or may be alleged to exist between the employee before the board and the agent, and if this presumption of bias permits the courts to review the merits of the decisions made by System Boards of Adjustment, the courts will be open wide to a flood of cases, not only under union shop agreements but under the ordinary collectively bargained agreements which regulate the day to day working conditions of railroad employees, and will be called upon to render those interpretations of railroad collectively bargained agreements, affecting future conduct of the parties under the agreements, that this Court held in the *Slocum* and *Railway Conductors* cases, *supra*, p. 19, to be within the exclusive jurisdiction of the administrative boards provided by the Railway Labor Act.

It is submitted that an interpretation of the Railway Labor Act bringing about such a result is unnecessary.

The presumption of the validity of decisions of System Boards of Adjustments which has existed since the first provision for such boards in the Railway Labor Act of 1926 should be retained. The rights of the employees whose disputes come before such boards are adequately protected by limiting court review to questions of proper procedure, to whether the board confined itself to the scope of the submission of the parties, and to whether the decision was arrived at by fraud and corruption, as held in the *Brand* and other cases cited *supra,* at pp. 13-17.

It should be noted that the District Court below recognized that upon proper allegations of bias, or fraud or corruption, it would have the right to review the decision of the System Board in respondent's case, but held that no such issues were properly raised by the complaint (R. 29-30). Even if the Court of Appeals below were correct in concluding that the District Court's holding was wrong, the Court of Appeals should have returned the case, not for trial on the merits, but for a determination of the question of bias. If bias were established and held to invalidate the Award, the District Court could properly only vacate or stay the award pending further handling by the parties under the processes of the Railway Labor Act.

III. Court review of the merits of a decision of a System Board of Adjustment, in the absence of statutory authority therefor, runs counter to the whole scheme of the Railway Labor Act.

As stated above, the *Slocum* and *Railway Conductors* cases, *supra,* p. 19, decided in 1950, resulted in a clear ruling by this Court that the jurisdiction of the

National Railroad Adjustment Board and other boards provided for in Section 3 of the Railway Labor Act is exclusive with regard to the minor disputes between railroads and their employees.

These decisions were the logical sequel to earlier holdings by this court interpreting the Railway Labor Act and affirming the intent of Congress to have railroad labor disputes settled by the machinery of the Railway Labor Act rather than in the courts.

In 1943 this court handed down decisions in three important cases under the Railway Labor Act: *Switchmen's Union of North America, et al.* v. *National Mediation Board,* 320 U.S. 297, *General Committee of Adjustment of the Brotherhood of Locomotive Engineers* v. *Missouri-Kansas-Texas Railroad Company, et al.,* 320 U.S. 323, and *General Committee of Adjustment of the Brotherhood of Locomotive Engineers, et al.* v. *Southern Pacific Company, et al.,* 320 U.S. 338.

In the *Switchmen's Union* case the National Mediation Board, in accordance with Section 2, Ninth of the Railway Labor Act (44 Stat. 577, 48 Stat. 1185), certified the Brotherhood of Railway Trainmen as representative of yardmen on the New York Central. The Switchmen's Union attempted to have this certification set aside. This Court held that no judicial review of the determination of the National Mediation Board was available.

This Court pointed out that Congress created in Section 2, Fourth of the Act the right of a majority of any craft or class of employees to determine their representative for the purpose of the Act and pro-

tected this right by Section 2, Ninth giving the Mediation Board power to settle controversies as to representation. This Court stated that review by the Federal District Courts of a determination by the National Mediation Board was not necessary to protect the rights created by Congress, since Congress in establishing the right had itself provided the method for its protection and it was for Congress to determine how the rights created by it should be protected and enforced.

The Court pointed out that Congress had provided for judicial review of administrative orders or determinations under the Act only in two situations, in suits to enforce Adjustment Board awards under Section 3, First (p), and in actions to enforce arbitration awards under Section 9. The Court concluded that since Congress had not provided expressly in the Railway Labor Act for review of these determinations by the National Mediation Board there was no right under the Act to such court review.

In the *Missouri-Kansas-Texas* case, *supra,* there was a jurisdictional dispute between two railroad labor unions with regard to their right to represent certain employees in collective bargaining. These unions, the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen, because of a continual movement of employees between the classes of engineers and firemen, had for many years been in agreement as to the rights of the respective brotherhoods to represent their members and as to the conditions under which engineers would be demoted to firemen and firemen promoted to engineers' work. An agreement providing a different

manner of handling these employees was entered into between the railroad and the firemen's brotherhood, and suit was brought by the Brotherhood of Locomotive Engineers on the ground that the agreement violated the Railway Labor Act.

The Court discussed the history of the Railway Labor Act and concluded that Congress left many of the problems which might arise under the Act to the voluntary processes of conciliation, mediation and arbitration while conferring jurisdiction on the courts and on administrative boards only over certain of the problems and disputes which might arise under the Act. The Court said there was a strong inference that Congress intended to go no further in the use of the processes of adjudication and litigation than was indicated by the express provisions of the Act.

The Court found that Congress had made no provision for the settlement of jurisdictional controversies between unions representing crafts with overlapping interests and that consequently the questions raised in this action were not justiciable. The Court said that a decision on the merits with regard to the jurisdictional controversy would involve the granting of judicial remedies which Congress did not intend to be available to the parties.

The *Southern Pacific* case, *supra,* decided on the same day, involved a similar controversy between the same brotherhoods. This Court again held that under the scheme of the Railway Labor Act Congress did not intend jurisdictional controversies between unions to be settled in the courts.

These decisions foreshadowed the ultimate conclusion that the remedies for minor disputes with

regard to collective bargaining agreements were to be found only under the Act and not in the courts, since Congress had provided administrative boards in Section 3 of the Act for the handling of such disputes. A long step in this direction was taken by this court in *Order of Railway Conductors, et al.* v. *Pitney, et al.*, 326 U.S. 561 (1946). In that case the railroad was faced with a dispute as to whether road conductors represented by the Order of Railway Conductors or yard conductors represented by B.R.T. should be used to man certain trains. An action involving the dispute was brought in the United States District Court which had charge of reorganization of the railroad involved. The suit asked the court to order the trustees of the railroad to continue to use road conductors on the trains.

The District Court dismissed the petition on the merits. When the case reached this Court it was held that since Congress in the Railway Labor Act intended to place a minimum responsibility on the courts with regard to railroad labor matters, the reorganization court should have exercised its equitable discretion to give the National Railroad Adjustment Board the first opportunity to pass on the merits of the dispute. This court sustained the action of the District Court in instructing the trustees in charge of the railroad on the basis of its findings on the merits but held that dismissal of the suit should be stayed by the District Court in order to give an opportunity for the dispute to be determined by the National Railroad Adjustment Board.

Thus in pursuance of its established interpretation of the Railway Labor Act as limiting the jurisdiction

of the courts to those matters which Congress clearly intended to be subject to judicial remedies, this Court took a further step to its ultimate conclusion that the National Railroad Adjustment Board and boards of adjustment have exclusive jurisdiction over these minor labor disputes, a conclusion which is based primarily on the theory of the Railway Labor Act that Congress provided a comprehensive scheme covering all phases of railroad labor relations, some of which are intended to be handled only through mediation, conciliation and arbitration, some of which are to be handled only by administrative action, and only a few of which, by express Congressional provision, are subject to judicial remedies.

It is true that this Court has held that the courts may act with regard to certain problems under the Railway Labor Act for which no express judicial remedies have been provided by the Act. In *Order of Railway Conductors of America, et al.* v. *Swan, et al.*, 329 U.S. 520 (1947), there was a stalemate involving the National Railroad Adjustment Board because of failure of the members of that board to agree on whether disputes involving yardmasters should be handled by the First Division or the Fourth Division. This Court decided that question in order to prevent what was termed as at page 524 "jurisdictional frustration on an administrative level" which prevented the yardmasters from pursuing their remedies before the National Railroad Adjustment Board. The Court held that although normally the question of jurisdiction should be determined by the administrative agency, the hopeless division among the members of the Adjustment Board in this case justified judicial guidance.

Likewise, this Court has held that there is a judicial remedy where the validity of a collectively bargained agreement is attacked, as distinguished from the case in which the interpretation or application of such an agreement is challenged. *Steele* v. *L. & N. R. Co.*, 323 U.S. 192 (1944); *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen*, 325 U.S. 210 (1944); and *Brotherhood of Railroad Trainmen, et al.* v. *Howard, et al.*, 343 U.S. 768 (1952). In each of these cases railroad employees brought suit attacking the validity of an agreement on the basis that it was unlawful under the Railway Labor Act and this Court held that disputes of this character did not fall within the jurisdiction of the National Railroad Adjustment Board.

The present case, however, bears no relationship to those cases where the jurisdiction of the courts has been sustained. No material question as to the validity of the union shop agreement under which respondent was discharged or the jurisdiction of the System Board of Adjustment to hear and decide disputes arising under the agreement is in question before this Court. No unlawful discrimination by the collective bargaining agent is involved in this case since the dispute involves a union shop agreement, sanctioned by Congress, which makes lawful the efforts of the collective bargaining agent to enforce its terms.

The whole history of interpretation of the Railway Labor Act in this Court denies the validity of the conclusion reached by the Court of Appeals below, that in the absence of express statutory authority the courts have jurisdiction to review on the merits the decisions of the bipartisan administrative boards

provided for by Congress in Section 3 of the Railway Labor Act.

IV. THE RAILWAY LABOR ACT PROVIDES AN ADMINISTRATIVE PROCEDURE FOR DETERMINING THE ISSUE OF WHETHER A LABOR UNION IS NATIONAL IN SCOPE FOR THE PURPOSES OF THE ACT, AND THIS ISSUE IS THEREFORE NOT SUBJECT TO DETERMINATION BY THE COURTS.

The sections of the brief above are concerned primarily with the question of the jurisdiction of the courts to review on the merits a decision of the System Board of Adjustment in a railroad labor dispute within that board's jurisdiction. The particular issue in respondent's case before the System Board of Adjustment, however, whether United Railroad Operating Crafts is "national in scope" within the meaning of Section 2, Eleventh (c) of the Railway Labor Act, is one which Congress has entrusted specifically to determination by an administrative board under Section 3, First (f) of the Railway Labor Act.

Section 3, First (a) of the Railway Labor Act (Appendix, *infra*, p. 51) provides that one-half of the members of the National Railroad Adjustment Board shall be selected by "such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of Section 2 of this Act."

Section 3, First (f) (Appendix, *infra*, p. 52) provides that if there is a dispute as to the right of any national labor organization to participate in the selection of members of the Adjustment Board, i.e., if there is a dispute as to the qualifications of a labor

organization as set forth in Section 3, First (a), the Secretary of Labor is to investigate the claim of the organization and if in his judgment the claim has merit, is to notify the National Mediation Board which thereafter shall establish a three-man board to decide the qualifications of the labor organization.

Contrary to the holding of the Court of Appeals below (R. 42-43) the board established under Section 3, First (f), in determining whether a labor organization is qualified to participate in selecting Adjustment Board members, is authorized to pass only on the questions raised by Section 3, First (a), namely, whether the organization is national in scope and whether it has been organized in accordance with the provisions of the Railway Labor Act.

These same qualifications, that a labor organization be national in scope and organized in accordance with the Railway Labor Act, must be established under Section 2, Eleventh (c) of the Act (Appendix, *infra*, p. 51) if membership in the labor organization is to constitute compliance with a union shop agreement between a railroad and another labor organization.

Section 2, Eleventh (c) provides that a union shop agreement shall permit a railroad employee in engine, train, yard or hostling service to comply with the agreement through membership in a labor organization, national in scope, organized in accordance with the Act, and admitting to membership employees of a craft or class in engine, train, yard or hostling service. These qualifications necessary under Section 2, Eleventh (c) are identical with those provided in Section 3, First (a) of the Act for labor organizations participating in selection of National Railroad Ad-

justment Board members. It is submitted, therefore, that Congress in adopting Section 2, Eleventh (c) intended that any dispute thereunder as to whether a union is national in scope or organized in accordance with the Railway Labor Act be determined by the administrative process specifically established in Section 3, First (f) of the Act.

Section 2, Eleventh (c) of the Railway Labor Act has a very brief legislative history which does not throw any express light on the intention of Congress with regard to the determination of disputes such as that raised by respondent with regard to the status of United Railroad Operating Crafts. This subsection of the union shop amendment resulted from a practical situation, possibly unique to the railroad industry, where employees of various classes are subject to frequent moves from one class to another in their day-to-day employment. On the railroads engineers are drawn from the ranks of firemen and when their seniority as engineers does not entitle them to work in that class they return to positions as firemen; a similar situation exists with regard to conductors and trainmen. The result is that a member of one of these so-called "operating" classes of employees may work intermittingly in two classes represented by different collective bargaining agents and might therefore have been required to comply with more than one union shop agreement if some special provision had not been made in Section 2, Eleventh of the Act.

The original union shop bill (S. 3295, 81st Congress) contained no provision with regard to this situation among the operating classes nor was any reference to the problem contained in the report of the Senate

Committee on the bill (S.R. 2262, 81st Congress, 2nd Session).

However, on September 23, 1950, Senator Hill of Alabama offered the following amendment on the floor:

> "Provided, further, that no such agreement shall require membership in more than one labor organization." (96 Cong. Rec. 15735, 81st Cong. 2nd Session)

In offering the amendment Senator Hill discussed the situation among the operating classes and stated that the purpose of his amendment was to assure that an employee not be deprived of employment because of lack of membership in the union representing the craft or class in which he is located if he maintains his membership in the union representing the class or craft from which he has been transferred.

Thereafter on December 7, 1950, Senator Hill offered on the floor a new amendment identical with the present provisions of Section 2, Eleventh (c) of the Railway Labor Act (96 Cong. Rec. 16260, 81st Cong. 2nd Session). Senator Hill pointed out that the language of the new amendment had the same intention and purpose as the prior amendment but the new amendment, spelling out in detail the purposes of the former amendment, had been agreed to by all the railroad labor organizations.

Despite the lack of legislative history, it must be presumed from the scheme and intent of the Railway Labor Act that Congress intended disputes arising as to the status of the labor organizations under Section 2, Eleventh (c) to be decided by the administrative

machinery of the Railway Labor Act rather than by the courts. There is no question but that a railroad labor union admitting to membership employees in the engine, train, yard and hostling services can secure through the processes provided by Section 3, First (f) of the Act a final and binding determination as to its status under union shop agreements. Under these circumstances it is clear that Congress intended the courts not to exercise jurisdiction to render decisions on the status of the labor organizations, particularly where, as will be discussed more fully below, the result might be differing determinations resulting in confusion in the application of such agreements on the different railroads.

In the opinion of the Court of Appeals below (R. 43) it is asserted that the administrative remedy provided by Section 3, First (f) of the Act is not an adequate remedy for an individual employee who asserts that the union he has joined is national in scope. However, an individual employee, like respondent, acts at his perif when with knowledge of the provisions of the union shop agreement and of the Railway Labor Act he terminates membership in the union which is his collective bargaining agent and joins another union. If the other union is not already recognized and established as a union national in scope and otherwise qualified under Section 2, Eleventh (c) of the Act the employee, even if he believes in good faith that the other union is national in scope, has placed himself beyond the protection of the union shop agreement and the Railway Labor Act.

Presumably respondent was told by representatives of UROC that membership in that labor organiza-

tion would mean compliance with the union shop agreement. It does not follow that respondent having acted on the basis of such a representation is entitled to a court determination of the status of his new labor organization.

Let us assume that instead of informing employees that a labor organization carrying on an organizing campaign is national in scope, the organizers tell the employees that the union shop agreement which covers them is invalid because the union which is a party to that agreement is not properly the collective bargaining agent of the employees. If the employees were persuaded by this argument and failed to comply with the union shop agreement it is clear that they could not thereafter have a court determination as to the propriety of the certification of the collective bargaining agent and the validity of the union shop agreement, since the determination of collective bargaining representatives for the purposes of the Railway Labor Act is exclusively within the jurisdiction of the National Mediation Board. *Switchmen's Union of North America, et al.* v. *National Mediation Board, supra*, p. 31. The only method of attacking the right of a labor organization to represent a class of employees for collective bargaining and to enter into a union shop agreement is through the administrative procedure provided by Section 2, Ninth of the Railway Labor Act, by request to the National Mediation Board from one or the other contending labor organizations. This again is not a remedy which is available to an individual employee as a defense against alleged non-compliance with a union shop agreement.

The opinion of the court below recognizes that the decision of the Court of Appeals for the Sixth Circuit in *Pigott* v. *Detroit, T. & I. R.R. Co., supra,* p. 23, is in direct conflict with the holding of the court below in this case. It is submitted that the decision in the *Pigott* case should have been extended by the court below to a holding that Section 3, First (f) of the Railway Labor Act not only provides an adequate administrative remedy for members of a labor organization whose status under the Act is in question but also provides an exclusive remedy for that labor organization on behalf of its members.

In the *Pigott* case plaintiffs were again members of the United Railroad Operating Crafts who brought suit to restrain the railroad from discharging them for failure to comply with a union shop agreement with the Brotherhood of Railroad Trainmen. Before the complaint was filed the disputes were presented to a System Board of Adjustment consisting of a representative of the railroad and a representative of the brotherhood, and this System Board held that the plaintiffs had failed to comply with the union shop agreement.

Among the contentions made before the Court of Appeals was the contention which was sustained by Judge Hand in his opinion in the court below, namely, that there was a presumption of bias on the part of the union representative on the System Board of Adjustment which rendered the award of the System Board of Adjustment invalid and required court review of the merits of the dispute.

The Court of Appeals for the Sixth Circuit discussed at length the procedure provided by Section 3,

First (f) of the Act for determining the qualifications established by Section 3, First (a) of the Act for a labor union which is to participate in designating members of the National Railroad Adjustment Board and concluded that this administrative procedure was an available and adequate remedy. The court pointed out that proceedings under Section 3, First (f) would be conclusive and would have a prospective universal application for the purposes of the Railway Labor Act. The court held that by adopting in Section 2, Eleventh (c) the same qualifications for a labor organization as are required by Section 3, First (a), Congress intended that before a labor organization should be in a position to protect its members working in classes represented by other collective bargaining agents the labor organization should have established its qualifications to participate in the administrative machinery of the National Railroad Adjustment Board. The court held that plaintiffs acted at their own peril in failing to insist that UROC establish its status under the administrative machinery provided by the Railway Labor Act for that purpose and in failing, pending such a determination, to maintain their membership in the union which was their collective bargaining agent.

The opinion of the court below, as has been indicated above, flatly differs with the holding in the *Pigott* case on the two grounds which have already been discussed, namely, that a proceeding to determine a labor organization's qualifications under Section 3, First (a) will not determine its qualifications under Section 2, Eleventh (c) and that the procedure of Section 3, First (f) is not available to the respondent and other individual employees. It is submitted that on the

contrary it is apparent from the provisions of the Act, as properly held in the *Pigott* case, that a decision made under the administrative machinery of Section 3, First (f) will be a final and binding determination of the status of a labor organization under Section 2, Eleventh (c). It is further submitted that the whole scheme of the legislative intent of the Railway Labor Act indicates that Congress did not intend individual employees to raise in the courts questions as to the status of labor organizations under the Railway Labor Act, whether for the purpose of Section 2, Eleventh (c) of the Act or for the purpose of determining the collective bargaining representative or for any other purpose under the Act.

Finally, there are urgent practical reasons for a holding that the procedures established by Congress under Section 3, First (f) of the Act are applicable to questions as to union status arising under Section 2, Eleventh (c) and were intended by Congress so to apply to the exclusion of the courts and other administrative remedies. If the question of whether a labor organization is national in scope is to be determined in each dispute on each railroad on an *ad hoc* basis there will be no end to disputes before the administrative boards and the courts. A court may ultimately determine that UROC was or was not national in scope in February, 1953, when respondent left the B.R.T., but what about an employee who joined UROC a year or six months or a month later? The issue on the subsequent date may be a new one, because of changes in membership, changes in representation of employees by UROC and other factors which vary from day to day in all labor organizations, and the

union which is a party to the union shop agreement may raise the question at any time.

This situation not only means continuous and prolonged litigation but it also imperils the employees subject to the union shop agreements. If a labor organization is held by the courts to be national in scope on a given date, that fact cannot assure an employee that a similar holding will follow if he joins the organization on a subsequent date and is cited for noncompliance with a union shop agreement. There will be no certainty in the application of the agreement to guide the conduct of the employees.

On the contrary, however, if a labor organization goes through the procedure of Section 3, First (f), and is held to be qualified to participate in naming the employee representatives of the National Railroad Adjustment Board, and thus national in scope and organized in accordance with the Act for the purposes both of Section 2, Eleventh (c) and Section 3, First (a), the situation with regard to that labor organization will become stabilized. The status of the organization will remain fixed unless and until, in a subsequent proceeding under Section 3, First (f), there is an administrative determination that the labor organization is no longer qualified. Similarly, if a labor organization has not qualified under Section 3, First (a) or has been held not qualified as the result of a board decision under Section 3, First (f), that status will remain fixed until it may be changed following new proceedings under the administrative process of Section 3, First (f). In any dispute under a union shop agreement, in which the cited employee pleads membership in a union national in scope and organ-

ized in accordance with the Railway Labor Act, the administrative board passing on the dispute need only look to determine whether the organization has been qualified on the date in question under the Section 3, First procedure. This is a matter of fact for precise determination, not only by the administrative boards but also by employees subject to the union shop agreements who are considering transfer from one union to another.

It is submitted that by holding the procedure of Section 3, First (f) to be applicable to these determinations of union status under Section 2, Eleventh (c) the pattern of judicial construction of the Railway Labor Act in the light of Congressional intent will be preserved.

CONCLUSION

Petitioner submits that in the above argument it has shown:

(1) The history of the Railway Labor Act and the decisions of the courts under the Act establish the finality of the decisions of bipartisan boards in railroad labor disputes and establish that the courts have jurisdiction to review the merits of such disputes only in the manner specifically provided in the Railway Labor Act for such a review.

(2) If there is to be a presumption with regard to the awards of the boards established by Congress to handle these labor disputes it is a presumption that the awards are valid and binding. Review of these awards must properly be limited to questions of procedure, whether the

awards conform to the submissions made and whether there was any actual fraud or corruption in arriving at the award. Under no circumstances should the courts undertake to review the merits of the awards but should leave the actual interpretation and application of the collectively bargained agreements, including union shop agreements, to the administrative machinery provided by the Railway Labor Act.

(3) Congress has provided in the Railway Labor Act an express administrative procedure for the determination of the issue raised by respondent. The holding of the court below that this issue is to be determined judicially is in direct conflict with the past interpretation of the Railway Labor Act to the effect that Congress drastically limited the judicial power with regard to disputes under the Act. The presence of this administrative machinery divests the courts of jurisdiction to determine this issue.

(4) The fact that the administrative machinery is available only to the labor organization to which respondent belongs does not give jurisdiction to the courts to determine the status of the labor organization any more than in a case where an individual employee may attack the right of his collective bargaining agent to act as such, a matter within the exclusive jurisdiction of the National Mediation Board and again a matter in which the individual has no judicial remedy. Furthermore, only by application of this administrative machinery can the issue of union status be handled in a manner which will avoid

confusion and uncertainty in the application of union shop agreements and which will afford protection to the operating employees who may transfer from one union to another.

Petitioner therefore respectfully requests this court to reverse the judgment of the Court of Appeals below and to affirm the judgment of the United States District Court for the Western District of New York dismissing respondent's complaint for failure to state a cause of action.

Respectfully submitted,

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APPENDIX

Relevant Statutory Provisions

SECTIONS 2 AND 3 OF TITLE I OF THE RAILWAY LABOR ACT, AS AMENDED (48 STAT. 1186, 1189, 64 STAT. 1238; 45 U.S.C. §§ 152, 153) PROVIDE IN PART AS FOLLOWS:

SECTION 2. * * *

"Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: Provided, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties uniformly required as a condition of acquiring or retaining membership: Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year upon the termination date of the applicable collective agreement, whichever occurs sooner.

"(c) The requirement of membership in a labor organization in an agreement made pursuant to sub-paragraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deduction from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: Provided, however, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services such employee, as a condition of continuing his employment may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him; Provided, further, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

"(d) Any provisions in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended."

"SEC. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board', the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

"(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

"(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall elect the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

"(c) The national labor organization as defined in paragraph (a) of this section, acting through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

"(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

"(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in a case of vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

"(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary

shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the ½ selection and designation of the labor members of the Adjustment Board to select a representative. Such representatives, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is likewise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

"(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

"(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

"First division: To have jurisdiction over disputes involving train-and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

"Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house

employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

"Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train-dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members five of whom shall be selected by the carriers and five by the national labor organizations of employees.

"Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when prop-

erly submitted, at any place designated by the division: Provided, however, That final awards as to any such dispute must be made by the entire division as hereinafter provided.

"(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee', to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board should be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the representative parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before a day named.

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the Adjustment Board shall be *prima facie* evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

"(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

* * * * *

"Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, form mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."